

## LEXSTAT 725 ILCS 5/103-2.1

ILLINOIS COMPILED STATUTES ANNOTATED  
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\*\*\* STATUTES CURRENT THROUGH PUBLIC ACT 95-1 \*\*\*  
\*\*\* ANNOTATIONS TO STATE CASES CURRENT THROUGH DECEMBER 31, 2006 \*\*\*

CHAPTER 725. CRIMINAL PROCEDURE  
CODE OF CRIMINAL PROCEDURE OF 1963  
TITLE I. GENERAL PROVISIONS  
ARTICLE 103. RIGHTS OF ACCUSED

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*725 ILCS 5/103-2.1 (2007)*

§ 725 ILCS 5/103-2.1. When statements by accused may be used

Sec. 103-2.1. When statements by accused may be used. (a) In this Section, "custodial interrogation" means any interrogation during which (i) a reasonable person in the subject's position would consider himself or herself to be in custody and (ii) during which a question is asked that is reasonably likely to elicit an incriminating response.

In this Section, "place of detention" means a building or a police station that is a place of operation for a municipal police department or county sheriff department or other law enforcement agency, not a courthouse, that is owned or operated by a law enforcement agency at which persons are or may be held in detention in connection with criminal charges against those persons.

In this Section, "electronic recording" includes motion picture, audiotape, or videotape, or digital recording.

(b) An oral, written, or sign language statement of an accused made as a result of a custodial interrogation at a police station or other place of detention shall be presumed to be inadmissible as evidence against the accused in any criminal proceeding brought under Section 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, or 9-3.3 of the Criminal Code of 1961 [720 ILCS 5/9-1, 720 ILCS 5/9-1.2, 720 ILCS 5/9-2, 720 ILCS 5/9-2.1, 720 ILCS 5/9-3, 720 ILCS 5/9-3.2, or 720 ILCS 5/9-3.3] or under clause (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code [625 ILCS 5/11-501][**Driving under the influence**] unless:

- (1) an electronic recording is made of the custodial interrogation; and
- (2) the recording is substantially accurate and not intentionally altered.

(c) Every electronic recording required under this Section must be preserved until such time as the defendant's conviction for any offense relating to the statement is final and all direct and habeas corpus appeals are exhausted, or the prosecution of such offenses is barred by law.

(d) If the court finds, by a preponderance of the evidence, that the defendant was subjected to a custodial interrogation in violation of this Section, then any statements made by the defendant during or following that non-recorded custodial interrogation, even if otherwise in compliance with this Section, are presumed to be inadmissible in any criminal proceeding against the defendant except for the purposes of impeachment.

(e) Nothing in this Section precludes the admission (i) of a statement made by the accused in open court at his or her trial, before a grand jury, or at a preliminary hearing, (ii) of a statement made during a custodial interrogation that was not recorded as required by this Section, because electronic recording was not feasible, (iii) of a voluntary statement, whether or not the result of a custodial interrogation, that has a bearing on the credibility of the accused as a witness, (iv) of a spontaneous statement that is not made in response to a question, (v) of a statement made after questioning that is routinely asked during the processing of the arrest of the suspect, (vi) of a statement made during a custodial interrogation by a suspect who requests, prior to making the statement, to respond to the interrogator's questions only if an electronic recording is not made of the statement, provided that an electronic recording is made of the statement of agreeing to respond to the interrogator's question, only if a recording is not made of the statement, (vii) of a statement made during a custodial interrogation that is conducted out-of-state, (viii) of a statement given at a time when the interrogators are unaware that a death has in fact occurred, or (ix) of any other statement that may be admissible under law. The State shall bear the burden of proving, by a preponderance of the evidence, that one of the exceptions described in this subsection (e) is applicable. Nothing in this Section precludes the admission of a statement, otherwise inadmissible under this Section, that is used only for impeachment and not as substantive evidence.

(f) The presumption of inadmissibility of a statement made by a suspect at a custodial interrogation at a police station or other place of detention may be overcome by a preponderance of the evidence that the statement was voluntarily given and is reliable, based on the totality of the circumstances.

(g) Any electronic recording of any statement made by an accused during a custodial interrogation that is compiled by any law enforcement agency as required by this Section for the purposes of fulfilling the requirements of this Section shall be confidential and exempt from public inspection and copying, as provided under Section 7 of the Freedom of Information Act [5 ILCS 140/7], and the information shall not be transmitted to anyone except as needed to comply with this Section.

**HISTORY:** Source: P.A. 93-206, § 25; 93-517, § 25; 94-117, § 10.

**NOTES:**

**EFFECTIVE DATE.**

Section 99 of P.A. 93-206 made this section effective 2 years after becoming law. The Act was approved July 18, 2003.

Section 99 of P.A. 93-517 made this section effective two years after becoming law. The Act was approved August 6, 2003.

**NOTE.**

P.A. 93-206 and P.A. 93-517 enacted identical versions of this section.

**EFFECT OF AMENDMENTS.**

The 2005 amendment by P.A. 94-117, effective July 5, 2005, added "or under clause (d)(1)(F) of Section 11-501 of the Illinois Vehicle Code" in (b) (**§ 625 ILCS 5/11-501. (As amended by P.A. 93-1093) *Driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof*).**

**CASE NOTES**

**APPLICABILITY**

Where 725 ILCS 5/103-2.1(b) created a presumption that an oral statement was inadmissible, this statute did not prohibit the admission of defendant's confession, as the statute had not become effective. *People v. Buck*, 361 Ill. App. 3d 923, 297 Ill. Dec. 700, 838 N.E.2d 187, 2005 Ill. App. LEXIS 1092 (2 Dist. 2005), appeal denied, 217 Ill. 2d 607, 300 Ill. Dec. 524, 844 N.E.2d 967 (2006).

